

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GEORGE BURNS,

Plaintiff,

-against-

RUSSELL B. SMITH, COUNTY LAW, 18B
ATTORNEY,

Defendant.

23-CV-9088 (LTS)

ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

On October 16, 2023, the Court dismissed this action because Plaintiff, who is currently incarcerated in the Westchester County Jail, is barred from filing any new action *in forma pauperis* (“IFP”) while he is a prisoner, *see Burns v. Schell*, ECF 1:20-CV-5582, 7 (S.D.N.Y. Oct. 28, 2020), and he did not allege that he was in imminent danger of serious physical injury, *see* 28 U.S.C. § 1915(g). On October 31, 2023, Plaintiff filed a motion for extension of time to file a notice of appeal, (ECF No.4), but he did not file a notice of appeal.

For the reasons set forth below, the Court denies Plaintiff’s motion for an extension of time to file a notice of appeal (ECF No. 14) as unnecessary and construes Plaintiff’s motion for an extension of time to appeal as a notice of appeal.

DISCUSSION

Under Fed. R. App. P. 4(a)(1)(A), a notice of appeal in a civil case must be filed within 30 days after entry of judgment. “[T]he taking of an appeal within the prescribed time is mandatory and jurisdictional.” *In re WorldCom, Inc.*, 708 F.3d 327, 329 (2d Cir. 2013) (citation and internal quotation marks omitted). Because Plaintiff’s time to file a notice of appeal has not expired, a motion for extension of time to appeal is unnecessary. Accordingly, Plaintiff’s request for an extension of time to appeal is denied as unnecessary. Because Plaintiff did not actually file

a notice of appeal, the Court construes the motion for an extension of time to appeal as a timely notice of appeal.

CONCLUSION

Plaintiff's request for an extension of time to file a notice of appeal (ECF No. 4) is denied as unnecessary.

The Court construes the request for an extension of time to file a notice of appeal as a timely notice of appeal and directs the Clerk of Court to process Plaintiff's notice of appeal in accordance with the procedures of the Clerk's Office.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: November 6, 2023
New York, New York

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
Chief United States District Judge